

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7226 of 2001

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NAROTTAMBHAI NATHUBHAI PATEL

Versus

SPECIAL LAND ACQUISITION OFFICER (G.H.B.)

Appearance:

MR MUKESH R SHAH for Petitioners.
MR AY KOGJE, AGP for Respondents No. 1 to 3
MR MD PANDYA for Respondent No. 4
MRS KETTY A MEHTA for Respondent No. 5
M/S THAKKAR ASSOC. for Respondent No. 6

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE Y.B.BHATT

Date of decision: 20/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. In this petition under Article 226 of the Constitution of India, the petitioners raise a short, but enlightening question, whether the erstwhile owners of the lands acquired under the Land Acquisition Act, 1894 (the Act for short) are entitled to return or reallotment of the lands from the respondent competent authorities merely upon a change of public purpose for which the lands were acquired.

2. With a view to appreciating the merits of the petition, and the challenge made in it, it would be expedient at this stage to make a skeleton projection of relevant material facts leading to the rise of this petition.

3. The petitioners were the owners of agricultural lands bearing Block Nos.47, 48, 73 and 74, situated at village Jangirabad, Surat, which came to be acquired by the respondent authority by virtue of a notification under section 4(1) of the said Act dated 18th October 1987, followed by a notification under section 6(1) dated 19th March 1988. The possession of the subject lands came to be taken over by the Gujarat Housing Board and Acquiring Body i.e. respondent no.5 on 30.8.1991 as the acquisition proceedings came to be initiated for the public purpose of construction of houses by the Gujarat Housing Board. The respondent no.5-Gujarat Housing Board deposited the amount of compensation determined by the competent authority after taking over the possession.

4. The petitioners have inter alia contended that some of the parcels of land covered under the award bearing Block Nos.24, 25, 39 and 44 were deacquired and released from the acquisition under section 48(1) of the Act by the order of the respondent authority dated 29.12.1990 and though the lands of the petitioners are similarly situated, their lands have not been deacquired in exercise of powers under section 48 of the Act by the respondent authority. The respondent no.4-Surat Urban Development Authority (SUDA), by its revised development plan and by notification dated 17.5.2001 issued by the Government of Gujarat in Urban Development and Urban Housing Department, have declared Block Nos.24, 25, 26, 27, 29/1, 39, 42/P, 44, 46/P and 75 of village Jangirabad from reservation for public housing by Gujarat Housing Board and subject lands have been deleted from the reservation and the lands were released under section

12(2)(a) of the Gujarat Town Planning Act (GTP Act). It is contended that despite the purpose of reservation of public housing by the Gujarat Housing Board, the respondent authority, changing the public purpose, granted the lands of the petitioners on a lease of 99 years to respondent no.6 South Gujarat Medical Education Trust (Trust) for the purpose of construction of medical college by executing a registered lease deed dated 11.6.2001. The petitioners, therefore, made representations to the respondent no.1 Special Land Acquisition Officer with a request to return the lands to the petitioners as the purpose for which the lands were acquired did not exist and the Gujarat Housing Board does not want to construct houses for low income group.

5. The petitioners have also contended that the respondent no.6 Trust is proceeding to construct medical college on self-finance basis and is also likely to earn profit, that the use for the medical college would be contrary to the sanctioned development plans under the GTP Act, and that if changes are required to be made, the procedure under the GTP Act is required to be followed afresh, including the change of purpose other than which is reserved under the Town Planning Scheme. The petitioners have, therefore, by invoking extraordinary constitutional writ remedy under Article 226, sought the main relief that the subject lands, which came to be acquired for the purpose of public housing by the Gujarat Housing Board, should be directed to be returned to the petitioners.

6. The respondents have appeared and contested the claim of the petitioners for the return or reallocation of the subject lands by filing affidavits in reply. The consensual defence is that the petitioners are not entitled to return or reallocation of the subject lands as the change of public purpose does not furnish a ground for such a relief. In the affidavits it has been jointly contended that the respondent no.6 is a public Trust and one of the objects of the Trust itself is providing medical education and it is a public charitable trust. The respondent no.6 Trust seeks to construct a charitable hospital upon the subject lands which will have 750 beds in phases. This hospital will be run purely on charitable principle and it will have no commercial purpose. The medical college will be attached to the hospital and the hospital is proposed to run absolutely on no profit no loss basis and it will be open for the treatment to the general public.

7. It is further stated that besides providing

treatments in general branches, the hospital will also provide treatments in specialised branches such as Cardiac, Nephrology, Urology, Neurology, Neuro Surgery, Cancer, etc., as at present there is no such hospital facility in western part of the river Tapi or city of Surat. It is, therefore, contended that the subject lands came to be given to the respondent no.6 Trust to cater the needs of people staying in the western side of area of city of Surat and on payment of full consideration of premium amount of Rs.63,93,711/- to the respondent no.5 Gujarat Housing Board.

8. It is also contended by the respondents that the respondent no.3 State Government has considered the object and purpose of the Trust and since it was found to be a laudable public purpose, the State Government has agreed and approved the same by passing a Resolution. The allegations of favouritism and nepotism levelled in the petition by the petitioners have been seriously controverted. The respondents have also placed reliance on the provisions of section 48 of the Act and the amended provisions of section 17-A of the Act. The petitioners have also filed affidavit in rejoinder in reply to the affidavit filed on behalf of respondent no.6 Trust.

9. Learned advocate for the petitioners has raised only the following submissions during the course of hearing of this petition:

[i] The purpose for which the lands came to be acquired is lost.

[ii] The Gujarat Housing Board has not passed any Resolution.

[iii] The Resolution passed by the State stating that the Gujarat Housing Board has passed a Resolution, therefore, is not correct.

[iv] The amount of Rs.37/- per square meter sanctioned by the State Government for the deal is inordinately low and therefore there is a loss of public money and drain on the public exchequer.

[v] The respondent no.6 is a private trust and therefore the transaction in favour of respondent no.6 cannot be said to be for the public purpose.

10. Learned advocates for the respondents have countenanced the aforesaid submissions and have contended

that the petition is not maintainable. It is also contended that factually also the petition has no merits.

11. Both the sides have placed reliance on the case law to which reference will be made by us as and when required at the appropriate stage. Since the aforesaid five points raised by learned advocate for the petitioners are interconnected, we would like to deal with them simultaneously.

12. In the course of the submissions, our attention was invited to a Division Bench decision of this Court, rendered on 19.3.2001, in Special Civil Application No.1957/2001. The said petition was filed seeking a similar relief and on the same grounds raised by the petitioners in the present petition, in respect of one of the parcels of land covered by the same notification and for the same purpose, raising the challenge against the same transaction and resolution impugned in this petition about which there is no dispute. In other words, there is a consensus about the grounds raised and the relief sought in that petition and the grounds and the relief raised and sought in this petition. We have gone through the aforesaid decision of this court. The said petition came to be dismissed at the threshold inter alia holding that the petitioner in that petition is not entitled to any relief rejecting all the grounds. It is, therefore, clear that this court had held in that case that there were no merits in the grounds raised in the said petition and the petition came to be rejected summarily.

13. Upon a pointed query to the learned advocate for the petitioners during the course of the hearing as to under what provision of law the return or reallotment of acquired lands has been sought by the petitioners, the learned counsel halfheartedly attempted to rely on the provisions of section 48 of the Act and he could not show any other provisions of law under which the entitlement of return of acquired lands.

14. Section 48 of the Act as such does not come into picture at all in the factual profile of the present petition. It deals with a situation enabling the Government to withdraw from the acquisition of any land, possession of which has not been taken. It would be profitable to refer to the said provisions of section 48 which reads as under:

"48: Completion of acquisition not compulsory,
but compensation to be awarded when not
completed: - (1) Except in the case provided for

in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be to the determination of the compensation payable under this section."

It would very well be visualised from the aforesaid provision while viewed in the light of the factual scenario of the present petition that it is not at all attracted. It is an enabling provision reserving liberty for the Government except in case provided under section 36 to withdraw from acquisition of any land of which possession has not been taken. The entitlement for returning or reallocation of the acquired land to the erstwhile owners cannot be based on the provision of section 48.

15. Learned counsel for the petitioners also stated before us that once the possession is taken pursuant to the exercise of the statutory powers by the competent authority, there is no other provision in the Act permitting deacquisition. The main prayer in this petition is for de-acquisition and return of acquired land on the alleged ground of change of purpose. Obviously, invocation of extraordinary prerogative discretionary constitutional writ remedy under Article 226 of the Constitution of India in this petition is not in the nature of public interest litigation. On the contrary, during the course of the submissions, learned counsel for the petitioners repeatedly relied on a Resolution of the Gujarat Housing Board in which the market price of the land is indicated at Rs.800/- per square meter and has contended that the transaction with the respondent no.6 for the construction of medical college and hospital fixing the market price at the rate of Rs.37/- per square meter would result into a great loss to the exchequer and public money and thereby contended that the lands may be returned to the petitioners so that the petitioners can make profit out

of it for self. It is, therefore, apparent that the petitioners are interested in championing the cause of self on account of great loss to the public exchequer. As such there is no public interest at all in this petition. Obviously, therefore, the petitioners must draw some legal basis or sanction from the statutory provision for seeking such extraordinary constitutional writ jurisdiction under Article 226 and the contentions which are otherwise required to be examined and considered in a public interest litigation would not arise in this petition at all.

16. At this stage we would also like to refer the provisions of section 17-A of the Act which came to be introduced by amendment by Gujarat Act No.20 of 1965. It would be also necessary and profitable to refer the said provision which reads as under:

"17-A. Use of land for any public purpose permitted: - When any land vests in the State Government or in a Corporation owned or controlled by the State Government under the provisions of this Act, it shall be lawful with the previous sanction of the State Government, to use such land also for any public purpose other than that for which its possession was taken."

It would be very well be seen from the aforesaid provision that it is lawful with the previous sanction of the Government to use the acquired land for any purpose other than that for which its possession was taken.

17. The resolution of the respondent no.3 State Government dated 17th October 2000 granting permission or approval to the respondent no.5-Gujarat Housing Board for the disposal of the subject lands fixing the value per square meter at the rate of Rs.37/- per square meter came to be passed pursuant to the unanimous resolution passed by the respondent no.5 Gujarat Housing Board dated 24.3.2000 being Resolution No.171/2000 permitting the respondent no.5 Housing Board for disposal of subject lands to respondent no.6 Trust. It will be interesting to refer here the provisions of section 49 of the Gujarat Housing Board Act, 1961 and the provisions of Rule 10, subrule (3) of the Gujarat Housing Board Rules, 1977 framed under the Gujarat Housing Board Act, 1961 relating to the disposal of its property, which read as under:

"49. The Board may retain, lease, sell, exchange or otherwise dispose of, any land, building or any apartment therein or other property vesting

in it and situate in the area comprised in any housing scheme sanctioned under this Act."

"10(3): Subject to the provisions of sub-rules (1) and (2) the Board shall not lease, sell, exchange, mortgage or otherwise dispose off any immovable property vesting in it and situate in the area comprised in any housing scheme sanctioned under the Act, without the prior approval of Government. Such transfer shall be subject to the such terms and conditions as Government may determine in each in that behalf.

Provided that in the case of a lease, the Board shall communicate to Government the terms and conditions of the proposed agreement and if no approval is received by the Board from Govt. within thirty days from the date of receipt of such communication by Government the Board may proceed to settle the proposed agreements as if Government has approved of the proposed:

Provided further that no such approval shall be required:

- (a) for allotment of tenements and premises according to the regulations made by the Board in that behalf;
- (b) for leasing any vacant land for a period not exceeding two years at a time; and
- (c) for sale or demolition of any building or structure, which is in a dangerous condition or beyond repair.

It is amply clear from the said provision that the Board is empowered to dispose of or transfer its interest in any land, building or any other property vesting in it and situated in the area comprised in any housing scheme sanctioned under the Act. There is no dispute that the subject lands are absolutely vested in the Gujarat Housing Board under section 16 of the Act. Section 16 of the Act makes it clear that when the Collector has made an award under section 11, he is empowered to take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. Therefore, legally and factually the respondent no.5 Gujarat Housing Board became the absolute owner of the subject lands free from all the encumbrances. In view of section 10(3) for the disposal of its property the

respondent no.5 Board is obliged to seek prior approval of the Government. It is explained by the respondent no.5 Board as to what necessitated the passing of its aforesaid Resolution in respect of the subject lands for the disposal. The respondent no.5 Board has pleaded that as there was a poor response to the project of putting up a housing scheme, the planning of construction of houses had to be dropped and the subject lands were kept vacant. The respondent no.5 Board was approached by respondent no.6 Trust through the District Collector demanding huge parcel of land to establish a medical college. The Board, therefore, considered the proposal of the respondent no.6 and as it was a proposal for a laudable and noble cause of establishing a medical college and a hospital by a Trust, it was resolved on 24th March 2000 to transfer the subject lands after getting necessary orders and directions from the State Government. The Resolution passed by the Board itself is self evident. It has been resolved by the respondent no.5 Board to seek direction and to implement upon seeking such directions from the Government, about the disposal of subject lands in the light of the request made by respondent no.6 Trust through Collector and the earlier requisition of the Commissioner, Surat Municipal Corporation. It is very clear from the said Resolution that such a request from the Commissioner, Surat Municipal Corporation was made and the respondent no.5 Board had also passed a Resolution bearing No.85/99 dated 27.2.1999 which was sent to the Government for approval. It is in this context the Resolution came to be passed by the Board dated 24.3.2000 whereupon the respondent no.3 State, considering the merits and the purpose, passed Resolution dated 17th October 2000. Therefore the contention that the respondent no.5 Board has not passed Resolution for the disposal of the subject lands is factually not correct.

18. Learned advocate for the petitioners contended that the subject lands are situated in the area under Reservation for the public housing in the Town Planning Scheme as per the Notification issued under the GTP Act, and therefore nobody can make any other use of the said lands for any other purpose and therefore the leasing of even after the previous approval of the Government by respondent no.5 Board to respondent no.6 Trust is not legal and valid. There is no dispute about the fact that the subject lands are situated in the residential reserved area for the public housing by the Guajrat Housing Board. This ground does not ipso facto invalidate the acquisition of land under the Act for the public purpose. The change of public purpose as such

would not entitle the erstwhile owners to get acquisition invalidated. Change of public purpose in respect of acquired land for the public purpose, even if it is not for the type of user permitted by the Town Planning Scheme in force at the time of transfer of land by Board to the Trust, would not invalidate the acquisition. There is no dispute about the fact that the permission to change of land use can be granted by the competent authority i.e. respondent no.4 Surat Urban Development Authority. The change of purpose is already applied for by the respondent no.6 Trust and it is being processed. Learned counsel appearing for respondent no.4 has also supported that the dereservation from the residential area and construction of housing scheme is being processed and has strongly opposed the present petition. Thus, the competent authority itself is not supporting the say of the petitioners. Apart from that the Urban Development and Urban Housing Department of State of Gujarat has sanctioned the proposal of Gujarat housing Board for giving the land on lease to respondent no.6 Trust by its letter dated 17.10.2000. In fact the competent authority SUDA had included the subject lands along with other lands in the reservation at the instance of the Board. It is a settled proposition of law that it is not necessary that the land proposed to be acquired by the Government for a public purpose should be for the same purpose or use mentioned in the Town Planning Scheme or Master Plan. Such an acquisition is also permissible. The acquisition will be varied if it is for a public purpose even if it is not for the type of user permitted by the Town planning Scheme in force at the time when the acquisition was made. The beneficiaries are entitled to move the competent authority for modification in the Town Planning Scheme so as to permit the use of the land for the public purpose for which the land is acquired. Such a process has been initiated and it is supported even by the competent authority respondent no.4. Our view is also fully reinforced by the proposition expounded by the Apex court in the case of Bhagat Singh Vs. State of U.P. reported in AIR 1999 SC 436. The Apex Court has clearly laid down that acquisition of land for the public purpose need not necessarily be for the type of user permitted by master plan at the time of acquisition and it would not invalidate it.

19. Learned counsel for the petitioners contended that the purpose of construction of medical college and hospital by respondent no.6 Trust cannot be said to be a public purpose as it is not a public body. This submission is also without any substance. The respondent no.6 is a public trust registered under the Bombay Public

Trust Act. The respondent no.6 Trust has also paid the full consideration premium amount of Rs.63,93,711/- to the respondent Board at the time of execution of the lease deed which has been executed and duly registered on 11.6.2001 between respondent no.5 Board and respondent no.6 Trust. The respondent no.6 has already been put into possession.

20. It is also noticed from the record that the Board of Trustees of the respondent no.6 Trust includes Vice-Chancellor of South Gujarat University, Mayor of Surat Municipal Corporation, the Collector of Surat and Dean of Government Medical College, Surat, who are Ex-Officio Trustees of respondent no.6. It has been categorically stated in the affidavit in reply filed on behalf of the respondent no.6 Trust that it seeks to construct a charitable hospital upon the subject lands and it will be run purely on 'no profit no loss basis', it will have 750 beds in phases and that the medical college will also be attached to this hospital. It is also specifically stated on behalf of the respondent no.6 Trust that the hospital will be open for the treatment to the general public. Of course, whether the medical college will be on the self-financing scheme or not is not specifically stated, but assuming that even if the hospital is proposed on the basis of self financing scheme, it does not necessarily mean that the public purpose is frustrated. When four aforesaid Ex-Officio persons are in the Board of Trustees in absence of any other further supporting material, the mere allegation of the petitioners that the basis of self financing scheme would only lead to commercial profit interest and not the public interest, is meritless and without any substance.

21. Again it may be noted that what is public purpose is statutorily stated in clause (f) of section 3 of the Act. It cannot be contended that the construction of medical college and hospital by the public trust would cease to be a public purpose because it is proposed by the trust and not the statutory body. Respondent no.6 Trust is a registered public trust under the Bombay Public Trust Act and the public purpose can be augmented, accelerated or proliferated through public trust in pursuance of any scheme of policy of the Government. The contention that it is not covered by clause (f) of section 3 of the Act is without any merits. Again it may be noted that section 3(f) of the Act defines "public purpose" and it is inclusive definition enumerative and not exhaustive. The contention that the public purpose in pursuance of the policy of the scheme of the Government cannot be advanced through the media or the

agency of public trust is not accepted by this Court in a reported Division Bench decision rendered in Special Civil Application no.9251/97 and others, decided on 11.11.1998. We do not find any substance or material on record to make a departure from the said view.

22. In view of the aforesaid discussion, the contentions advanced by the learned advocate for the petitioners are without any substance. The petition is misconceived in view of the provisions of section 17-A of the Act referred to hereinabove and settled proposition of law.

23. In the case of Union of India and others Vs. Jaswantrao Kochhar and others, reported in (1996) SCC 491, it has been held that change of user from one public purpose to another public purpose will not invalidate the acquisition of land. In this case the land was acquired for public purpose of housing scheme, but the lands were sought to be utilised for commercial purpose viz. the District Centre. Therefore notification under section 4(1) of the Act was questioned. It has been held in the said decision that the construction of District Centre for commercial purpose itself is a public purpose. It is well settled that the land sought to be used acquired for public purpose may be used for another purpose and therefore when notification has mentioned that the land is sought to be acquired for housing scheme, but it is sought to be used for construction of a hospital, the public purpose does not cease to be public purpose. Such a view was also taken by the Apex Court in the case of The Collector of 24 Parganas and others Vs. Lalit Mohan Mullick and others, reported in AIR 1986 SC 622.

24. In the case of C. Padma and others Vs. Dy. Secretary to the Government of Tamilnadu and others, reported in (1997) 2 SCC 627, the Hon'ble Supreme Court has laid down the proposition that the claimants-original owners of the acquired land are not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for any other purpose. As held in the case of Shri Chandragauda Ramgonda Patil Vs. The State of Maharashtra, reported in JT 1996 (9) SC 258, even the land remaining unutilised for any public purpose is not required to be restituted to the erstwhile owner to whom adequate compensation was paid according to market value as on the date of notification.

25. In our opinion, this petition at the instance of erstwhile owners of the acquired lands is totally

misconceived and after having taken into consideration the overall factual landscape and the relevant legal aspects, the petitioners have totally failed to establish their right to return or reallocate the lands acquired for public purpose. In fact the petition is filed without any entitlement and basis. The petition is, therefore, required to be dismissed. Accordingly the petition is dismissed with costs quantified at Rs.5000/-. Rule is discharged. Obviously when the petition is rejected on merits, interim relief would not assume any survival value.

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